

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 47:205. Contents of the application for petroleum contaminated soil treatment facilities.

6 RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.99

7 STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet
9 to adopt rules and administrative regulations for the management, processing, or disposal of
10 wastes. KRS 224.40-305 requires that persons engaging in the management, processing, or
11 disposal of waste obtain a permit. This administrative regulation establishes the application
12 requirements for a petroleum contaminated soil treatment facility.

13 Section 1. Definitions. As used in this administrative regulation:

14 (1) "Certifying engineer" means the professional engineer that implements the petroleum
15 contaminated soil treatment facility construction quality assurance plan;

16 (2) "Construction progress report" means the written notice from the applicant to the
17 cabinet that the biopile liner system and the petroleum contaminated soil facility is completed.

18 (3) "Petroleum contaminated soil" means silt, sand, clay, gravel, or other earthen
19 material; asphalt, concrete, or absorbent materials containing hydrocarbon concentrations above
20 the levels established in 401 KAR 48:205, Section 6, Table 2, but does not exhibit a hazardous
21 characteristic or is not a listed hazardous waste as defined in 401 KAR Chapter 31.

1 (4) "Petroleum contaminated soil treatment facility" means a solid waste site or facility
2 where petroleum contaminated soil is treated to reduce contaminant concentrations to or below the
3 levels established in 401 KAR 48:205, Section 6, Table 2.

4 Section 2. Objective and General Requirements. (1) This administrative regulation shall
5 apply to petroleum contaminated soil treatment facilities.

6 (2) Designs, reports, and plans constituting the public practice of geology, as defined at
7 KRS 322A.010, shall be developed by a person registered as established in KRS Chapter 322A,
8 except as established in KRS 322A.080.

9 Section 3. Applicability and Exemptions. (1) Except as provided in subsection (2) of
10 this section, this administrative regulation shall apply to all applicants for a petroleum
11 contaminated soil treatment facility.

12 (2) Owners or operators of petroleum contaminated soil treatment facilities
13 operating under a Class III landfarming permit, in effect prior to October 6, 2011, shall be
14 exempt from the requirements of 401 KAR 48:205 and this administrative regulation
15 unless:

16 (a) The facility is required to perform groundwater corrective action in accordance
17 with 401 KAR 48:300, Section 8;

18 (b) A major modification application is filed with the cabinet to expand the waste
19 boundary, in which case the new area shall meet the requirements of 401 KAR 48:205 and
20 this administrative regulation; or

21 (c) A renewal application is not approved pursuant to 401 KAR 47:130, Sections 5
22 through 7 and 47:160, Section 5.

1 **Section 4.** Application Procedures for Petroleum Contaminated Soil Treatment Facility

2 Permits. In order to apply for a petroleum contaminated soil treatment facility permit, the applicant
3 shall first submit form DEP 7129, Notice of Intent to Apply for a Petroleum Contaminated Soil
4 Treatment Facility Permit (NOI).

5 (1) The NOI shall contain the following information:

6 (a) Names, addresses, telephone numbers, and contact information for the applicant;

7 (b) If the operator is not the owner of the property where the treatment facility will be
8 located, the operator and owner shall be co-applicants; and

9 (c) If the applicant is a government agency, corporation, company, or partnership, include
10 the name, address, telephone number, and contact information for the process agent or contact
11 individual.

12 (2) The NOI shall be signed in accordance with 401 KAR 47:160, Section 6.

13 (3)(a) Once the NOI is complete, the cabinet shall make a decision to approve or deny.

14 (b) If the cabinet approves the NOI, the applicant shall perform the geological site
15 investigation in accordance with the approved plan contained in the permit application.

16 (4)(a) Once the geological site investigation is complete, the applicant shall submit the
17 form DEP 7128, Application for a Petroleum Contaminated Soil Treatment Facility Permit which
18 shall specify standards for the construction and operation of the petroleum contaminated soil
19 treatment facility in accordance with the requirements established in 401 KAR 48:205.

20 (b) The application shall be typed or printed legibly in permanent ink.

21 (c)1. The application shall contain the names, addresses, telephone numbers, and contact
22 information for the applicant; and

2. If the applicant is a government agency, corporation, company, or partnership, include the name, address, telephone number, and contact information for the process agent or contact individual;

(d) 1. The applicant shall submit and sign the application in accordance with 401 KAR 47:160, Section 6; and

2. If the operator is not the owner of the property where the treatment facility will be located, the operator and owner shall be co-applicants.

(e) The applicant shall deliver a copy of the application to the county or local governing body where the petroleum contaminated soil treatment facility will be located prior to submittal to the cabinet.

(f) The contents of the application shall be accurate and complete at the time the cabinet makes a determination to issue a solid waste permit.

(g) Issuance of construction and construction/operation permits:

1.a. The cabinet shall issue a construction permit for no more than five (5) years if, after completing the review of a complete petroleum contaminated soil treatment facility permit application, it finds that the applicant for the permit has met the requirements for application in accordance with KRS 224 Subchapter 40; 401 KAR 47:207, 48:205, 48:206, 48:207, 48:208 and this administrative regulation.

b. The applicant shall maintain a construction permit in full force and effect until the facility has been constructed and approved by the cabinet.

2. A construction/operation permit shall be issued by the cabinet when:

a. The applicant submits the form DEP 8064, Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility:

1 i. Certifying that the petroleum contaminated soil treatment facility construction has been
2 completed in accordance with the construction permit; and

3 ii. Including the findings of the certifying engineer regarding the quality assurance and
4 quality control testing in the Construction Progress Report for a Petroleum Contaminated Soil
5 Treatment Facility.

6 b. A representative of the cabinet inspects the site and verifies in writing within thirty
7 (30) days of the inspection that the site has been developed according to plans and that necessary
8 equipment is available to operate the site;

9 c. The financial assurance for closure as established in Section 9 of this administrative
10 regulation has been obtained by the applicant;

11 d. The applicant submits a certification by the certifying engineer that the facility is
12 constructed in accordance with the approved plans and specifications.

13 (3) In order to continue operating after March 1, 2013, owners or operators of existing
14 petroleum contaminated soil treatment facilities operating under a current permit shall obtain a
15 petroleum contaminated soil treatment facility permit.

16 (4) For a major modification to an existing petroleum contaminated soil treatment facility
17 permit as established in 401 KAR 47:130, Section 3 that:

18 (a) Does not increase the area monitored by the groundwater monitoring system as
19 established in 401 KAR 48:300, Section 4 the owner or operator shall:

20 1. Submit to the cabinet a completed, DEP 7128, Application for a Petroleum
21 Contaminated Soil Treatment Facility Permit; and

22 2. Comply with the permit application procedures as established in this section.

(b) Does increase the area monitored by the groundwater monitoring system as established in 401 KAR 48:300, Section 4 the owner or operator shall submit to the cabinet a completed:

1. DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility;

2. DEP 7129, Application for a Petroleum Contaminated Soil Treatment Facility Permit; and

(c) Comply with the permit application procedures as established in this section.

Section 5[4]. Technical Contents of the Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit. The form DEP 7128, Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility (NOI) shall contain the geological site investigation plan which shall be used in compiling the information for the application for a petroleum contaminated soil treatment facility permit, including:

(1) An original current USGS seven and one-half (7.5) minute topographic quadrangle map showing:

(a) Latitude and longitude measurements for the entrance to the site;

(b) The current and proposed waste treatment areas;

(c) The property boundaries; and

(d) The area within one (1) mile of the proposed waste boundary.

(2) A review of information pertaining to the area within one (1) mile of the proposed waste boundary, including:

(a) Geology including karst features, structural features, and lithologic description;

(b) Hydrogeology of the groundwater resources and aquifers that shall be monitored;

1 (c) Hydrology including streams, wetlands, and other surface water bodies; and

2 (d) Caves and excavations, including mined or quarried areas;

3 (3) A rock coring plan that includes the following:

4 (a) The data needed to evaluate the geologic features to the level of the first confining layer
5 below the uppermost aquifer, and all geologic units hydraulically connected to the uppermost
6 aquifer;

7 (b) The data to describe the site geology, the local aquifers that are hydrogeologically
8 associated with the site, and the transmissivity of the aquifers; and

9 (c) Relevant field data and appropriate test methods for determining hydrogeologic
10 parameters;

11 (4)(a) Directions to be used for closure of the rock core borings using grout.

12 (b) The closure of the rock corings shall be acknowledged in writing by a professional
13 engineer or registered geologist;

14 (5) The following minimum surveying accuracy to be used to determine the location of the
15 rock corings and the soil borings during the subsurface investigation:

16 (a) One tenth of one (0.1) foot vertical; and

17 (b) One (1) foot horizontal;

18 (6)(a) A procedure for written documentation when the locations of actual subsurface
19 borings or corings are adjusted in the field; and

20 (b) The adjusted excavation locations shall achieve the criteria of this section of this
21 administrative regulation.

22 (7)(a) The geotechnical investigation map shall show the location of a minimum of four (4)
23 rock core borings;

(b) For sites with more than fifty (50) acres, an additional rock core boring shall be required for each additional twenty-five (25) acres or part thereof;

(c) The placement of the rock core borings shall be dependent on site geologic features of the proposed site; and

(d) Additional rock core borings shall be required when four (4) rock core borings fail to characterize the geology.

(8) Other informational sources researched for site specific attributes, including:

(a) Surface mining permits;

(b) Subsurface excavation and mining permits; and

(c) Records of the Kentucky Geological Survey and the Kentucky Department of Natural Resources.

Section 6[5]. Technical Contents of the Permit Application for a Petroleum Contaminated Soil Treatment Facility. The following information shall be submitted on or with form DEP 7128, Application for a Petroleum Contaminated Soil Treatment Facility Permit:

(1) Facility information including location, total acreage, and maximum soil treatment volume in cubic yards;

(2) An original, current seven and one-half (7.5) minute United States Geological Survey quadrangle topographic map with the proposed facility boundary and the locations of all of the wells and springs listed in subsection (19) of this section clearly marked;

(3) A site map drawn to scale and prepared by a professional engineer or land surveyor, licensed pursuant to KRS Chapter 322, showing:

1. North arrow;

2. Buffer zones;

1 3. Buildings;

2 4. Treatment areas;

3 5. Storage areas;

4 6. Access roads;

5 7. Fences;

6 8. Gates;

7 9. Floodplains;

8 10. Floodway;

9 11. Wells and springs;

10 12. Surface water bodies including ponds;

11 13. Property lines;

12 14. Monitoring wells; and

13 15. Surface water monitoring points.

14 (4) A certified copy of the recorded deed and a copy of declaration of restrictions or
15 easements affecting the proposed permit area.

16 (5) A scaled deed map showing the current boundaries of all property proposed for the
17 facility development and buffer zones, the ownership of these properties, and the ownership of
18 properties adjacent to the proposed facility property boundary;

19 (6)(a) The applicant shall provide a copy of the lease or proposed lease showing the
20 operator's right of entry during construction, operation, and closure of the petroleum contaminated
21 treatment facility.

22 (b) The proposed lease shall be executed prior to permit issuance.

(7) A narrative of the methods that the owner or operator shall use to comply with the following environmental performance standards:

(a) Floodplain restrictions established in 401 KAR 47:030, Section 2;

(b) Endangered and threatened species established in 401 KAR 47:030, Section 3;

(c) Surface Waters established in 401 KAR 47:030, Section 4;

(d) Polychlorinated biphenyls established in 401 KAR 47:030 Section 8;

(e) Air established in 401 KAR 47:030, Section 10;

(f) Safety established in 401 KAR 47:030, Section 11(1) and 11(3);

(g) Public Nuisance established in 401 KAR 47:030, Section 12; and

(h) Wetlands established in 401 KAR 47:030, Section 14.

(8) A narrative description of the liner design and quality assurance plan as established in 401 KAR 48:205, Section 3.

(9) A detailed contingency plan for emergencies including fires, equipment failure, and provisions for temporary storage of waste;

(10) A description of the type of hydrocarbons and contaminants in the petroleum contaminated soil as listed in 401 KAR 48:205, Section 5, Table 1;

(11) A description of the type of media that contains the hydrocarbons;

(12) (a) Characterization of the petroleum contaminated soil as required in 401 KAR 48:205, Section 5, to verify the information in subsection (11) of this section;

(b) Copies of the laboratory analysis reports prepared for waste characterization.

(13) A written description of the waste inspection program to ensure that only permitted petroleum contaminated soils are accepted for treatment as established in 401 KAR 48:205, Section 4;

1 (14) A description of the treatment process and equipment to be used to meet the
2 requirements established in 401 KAR 48:205, Section 6 including the following items:

3 (a) Equipment to be used including manufacturer performance data;

4 (b) Use of fertilizers, inoculants, or enzymes;

5 (c) Monitoring plan including sampling frequency and analysis to verify the reduction of
6 contaminants to or below the levels in 401 KAR 48:205, Section 6, Table 2;

7 (d) Estimated times to complete treatment;

8 (e) Sampling plan to document that treatment has been completed in accordance with
9 48:205, Section 6, Table 2; and

10 (f) Storage of soil meeting the treatment standards of 48:205, Section 6, Table 2;

11 (15) Treated soil specifications for the constituents found during waste characterization that
12 are not listed in 401 KAR 48:205, Section 6, Table 2;

13 (16) A marketing and distribution plan for the treated media;

14 (17) The design and specifications for the roofed structure containing a concrete pad or
15 liner as established in 401 KAR 48:205, Section 3;

16 (18) The results from the geological site investigation required in the approved NOI shall
17 include the following:

18 (a) A description of the regional bedrock geologic structure to include the regional
19 stratigraphic strike and dip, the locations and attitudes of regional faults and folds; and regional
20 jointing trends;

21 (b) A description of the site specific geologic structure to include:

22 1. Site specific stratigraphic strike and dip;

23 2. The locations and attitudes of faults or folds intersecting the site; and

1 3. The attitudes and spacing of joints;

2 (c) A brief description of the influence that fracture zones have on the movement of
3 infiltrated water, and groundwater;

4 (d) A minimum of two (2) geologic cross sections, using published data, bedrock outcrops,
5 and rock coring information depicted on scaled drawings with vertical exaggeration, and shall
6 include the following:

7 1. The seasonal high groundwater table; and

8 2. Rock outcrop occurrences.

9 (e) A map depicting the property, the proposed limits of waste, and the area at least 1,500
10 feet from the limits of waste at a scale of one (1) inch equals 400 feet that shows the following:

11 1. Geologic units, and rock outcrops;

12 2. Surface depressions, sinkholes, and springs;

13 3. Faults, folds and structural contours;

14 4. Location of wells used for water withdrawal, and injection of fluids;

15 5. Location of rock core borings; and

16 6. Surface contours.

17 (19) The following hydrogeologic characterization:

18 (a)1. The hydrologic characteristics of the uppermost aquifer, and the geologic units
19 hydraulically connected to it, including field test data for hydraulic conductivity, storage
20 coefficient, and transmissivity; and groundwater hydraulic gradient and velocity.

21 2. The description of these characteristics shall be based on multiple well aquifer tests,
22 piezometer nest evaluation, core evaluation, and other methods common to the practice of geology
23 pursuant to KRS 322A.

1 3. In karst terrain, both diffuse and discrete flow conditions shall be characterized.

2 4. The groundwater quality characterization, as established in 401 KAR 48:300, Section 3
3 shall be included.

4 5. The application shall include data, procedures, and calculations used to determine these
5 characteristics.

6 (b) Tracer studies. Where the petroleum contaminated soil treatment facility overlies
7 fractured bedrock, weathered limestone, or dolomite bedrock; or where karst terrain cannot be
8 avoided, the cabinet shall require tracer studies before finalizing the groundwater monitoring plan
9 using springs as monitoring points as established in 401 KAR 48:300, Section 4; and

10 (c)1. A survey and listing of residential springs and water wells within one (1) mile of the
11 proposed waste treatment areas.

12 2. The survey shall determine the location of springs and wells which shall be shown on a
13 map with their approximate elevation, depth, name of owner, age, and usage of the spring or well,
14 stratigraphic unit, well construction, static well levels, spring or well yield, and water quality.

15 (20)(a) Groundwater and surface water monitoring plans prepared in accordance with
16 Section 7 of this administrative regulation.

17 (b) Groundwater and surface water monitoring plans shall include identification and
18 labeling of monitoring wells and surface water monitoring points on the site map required by
19 subsection (4) of this section;

20 (21) Certification that a copy of the application has been delivered to the governing body of
21 the solid waste management area in which the petroleum contaminated soil treatment facility will
22 be located; and

(22) A plan for the closure of the petroleum contaminated soil treatment facility describing how the property will be restored or improved in accordance with 401 KAR 48:205, Section 7.

Section 7[6]. Public Information Process for Petroleum Contaminated Soil Treatment Facilities. The cabinet and applicant shall comply with the public information requirements for petroleum contaminated soil facilities established in 401 KAR 47:207.

Section 8[7]. Surface Water and Groundwater Monitoring, Assessment Monitoring, and Corrective Action Plan. (1) The form DEP 7129, Application for a Petroleum Contaminated Soil Treatment Facility Permit, shall include a surface water and groundwater monitoring plan as established in 401 KAR 48:300, Sections 2 and 4.

(2) When required as established in 401 KAR 48:300, Section 8, an owner or operator of a petroleum contaminated soil treatment facility shall submit an assessment or corrective action plan.

Section 9[8]. Alternative Specifications. Alternative specifications may be used only after approval by the cabinet upon a certification by a professional engineer, or, for geological studies, a professional engineer or a registered geologist that the alternative specifications will result in performance with regard to safety, stability, and environmental protection equal to or better than that resulting from designs complying with the specifications of this administrative regulation.

Section 10[9]. Financial Assurance. (1) The owner or operator shall comply with the closure financial assurance requirements established in 401 KAR 48:310 and KRS 224.40-650.

(2) The amount of the closure financial assurance shall be equal to the closure cost estimate amount specified in the permit as established in 401 KAR 48:205, Section 7.

Section 11[10]. Incorporation by Reference. (1) The following materials are incorporated by reference: (a) "Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7128, (April 2011) is incorporated by reference;

1 (b) "Application for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7129,
2 (April 2011) is incorporated by reference; and


3 (c) "Construction Progress Report for a Petroleum Contaminated Soil Treatment
4 Facility", DEP 8064, (April 2011) is incorporated by reference.

5 (2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright
6 law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort,
7 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

8 (b) This material is also available on the Division of Waste Management's website at
9 <http://waste.ky.gov>.

401 KAR 47:205 approved for filing.

7/13/11
Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelli Reynolds

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for an application for a petroleum contaminated soil treatment facility.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the content requirements for an application for a petroleum contaminated soil treatment facility.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing the content for a petroleum contaminated soil treatment facility permit, which are types of solid waste sites or facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statutes by establishing the contents for a petroleum contaminated soil treatment facility which will protect the environment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds language to exempt existing facilities from meeting the requirements of this administrative regulation if they comply with certain standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to not place an undue burden on existing facilities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by allowing existing facilities to continue to operate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by not putting an undue burden on existing facilities unless they fail to protect human health and the environment or follow

permitting regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Businesses that treat petroleum contaminated soils will be affected by this administrative regulation. There are currently 3 permitted by the Solid Waste Branch.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities will have to remain in compliance with the requirements for protecting groundwater in order to be exempt from upgrading the facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

As a result of compliance, existing facilities will not be required to upgrade and install a liner.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This regulation will be implemented and enforced using the solid waste permit fees collected pursuant to 401 KAR 47:090 and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase of fees and no additional funding is necessary to implement this regulation.

There will be no increase of fees and no additional funding necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

With this amendment, tiering is applied. Existing facilities will not have to meet the requirements of this administrative regulation until they apply for a major modification to the permit or have to perform corrective action for groundwater.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 47:205

Contact Person: Kelli Reynolds

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Kentucky Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100 and 224.40-305

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None

(c) How much will it cost to administer this program for the first year?

No additional cost to the Division of Waste Management

(d) How much will it cost to administer this program for subsequent years?

No additional cost to the Division of Waste Management

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Notice of Intent to Apply for a Petroleum Contaminated Soil Treatment Facility Permit", DEP 7129, (April 2011). This document is to be submitted for an Application for a Petroleum Contaminated Soil Treatment Facility permit.

This document consists of 12 pages.

II. This administrative regulation incorporates by reference the "Application for a Petroleum Contaminated Soil Treatment Facility", DEP 7128, (April 2011). This document is to be submitted for an Application for a Petroleum Contaminated Soil Treatment Facility permit.

This document consists of 20 pages.

III. This administrative regulation incorporates by reference the "Construction Progress Report for a Petroleum Contaminated Soil Treatment Facility", DEP 8064, (April 2011). This document is to be submitted to receive a construction/operation permit.

This document consists of 12 pages.

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 47:205
Amended After Comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Waste Management

I. A public hearing on 401 KAR 47:205 was held on May 23, 2011 at 10:00 a.m. in Conference Room 301 D at 300 Fair Oaks Lane, Frankfort, Kentucky, 40601. There were no attendees at the public hearing.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
W. Blaine Early, III, Attorney	Triple M Land Farms, Inc.

III. The following people responded to comments:

<u>Name and Title</u>	<u>Affiliation</u>
Anthony Hatton, Director	Division of Waste Management
Ron Gruzesky, Manager, SWB	Division of Waste Management
Cassandra Jobe, Supervisor, PPA	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject matter: Petroleum Contaminated Soil Treatment Facilities.

(a) Comment: W. Blaine Early, Triple M Land Farms, Inc.

Triple M Land Farms, Inc. requests that the Division withdraw the regulations because they do not significantly improve environmental protection and they add tremendous costs to Triple M's operations.

(b) Response:

The Division appreciates the concerns that Triple M has raised regarding the implications of these regulations on the current facility. The Division maintains that the proposed regulations will be more protective of human health and the environment. However, the Division also acknowledges the valuable service that Triple M provides. Therefore, the division has made an exemption in 401 KAR 47:205.

V. Summary of Action Taken by Promulgating Agency

401 KAR 47:205. Comments were considered and the following changes are suggested:

Page 2

Section 3

Line 9

After "Section 3", insert:

"Applicability and Exemptions. (1) Except as provided in subsection (2) of this section, this administrative regulation shall apply to all applicants for a petroleum contaminated soil treatment facility.

(2) Owners or operators of petroleum contaminated soil treatment facilities operating under a Class III landfarming permit, in effect prior to October 6, 2011, shall be exempt from the requirements of 401 KAR 48:205 and this administrative regulation unless:

(a) The facility is required to perform groundwater corrective action in accordance with 401 KAR 48:300, Section 8;

(b) A major modification application is filed with the cabinet to expand the waste boundary, in which case the new area shall meet the requirements of 401 KAR 48:205 and this administrative regulation; or

(c) A renewal application is not approved pursuant to 401 KAR 47:130, Sections 5 through 7 and 47:160, Section 5.

Section 4."

Renumber Sections 4 through 10 accordingly.